SUPREME COURT, U. S.

No. 73-228

Supreme Court, U. S.
FILED
AUG 31 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NEW JERSEY COUNTY AND MUNICIPAL COUNCIL NO. 61, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, NEW JERSEY PUBLIC AND CIVIL SERVANTS EMPLOYEES LOCAL 1959, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, ROBERT C. MURPHY, FRANK BASSILO and RITA FURNISS, *Petitioners,*

v.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, JERRY WURF, individually and as International President of American Federation of State, County and Municipal Employees, LOUIS KAPLAN, individually and as Trustee of New Jersey Public and Civil Servants Employees, Local 1959 and CHARLES KELLER, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 44a-51a) is not yet reported. The opinions of the Federal District Court for the District of New Jersey (Pet. App. 1a-43a) are not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on May 4, 1973. The petition was filed on August 2, 1973. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Title III of the Labor-Management Reporting and Disclosure Act of 1959 confers upon federal courts jurisdiction to entertain challenge to a trusteeship established by a parent labor organization over a local union which, because it represents only public employees, is not a labor organization within the meaning of the Act.

STATUTE INVOLVED

The relevant provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 520-521, 530-532, 29 U.S.C. §§ 402(e), (i), (j), 461-464, are set forth in Appendix A.

STATEMENT OF THE CASE

This is an action seeking to challenge the establishment of trusteeship in January of 1972 by respondent American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter "AFSCME" or "Respondent AFSCME") over petitioner New Jersey Public and Civil Servants Employees Local 1959, AFSCME, AFL-CIO (hereinafter "Local 1959" or "petitioner Local 1959") pursuant to the International Constitution of AFSCME. The action was brought under the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter "the Act"), 29 U.S.C. § 464(a), and the complaint

alleged that the trusteeship was not established for a purpose allowable under 29 U.S.C. § 462.

The actions of Local 1959 which brought about the imposition of trusteeship and the reasons for its imposition were not considered by the court of appeals nor are they raised by the Petition.

It is undisputed by the parties that respondent AFSCME is a "labor organization" as defined by 29 U.S.C. § 402(i) and that petitioner Local 1959, although a subordinate body of AFSCME, is not a "labor organization" within the meaning of the Act because its membership consists solely of employees of political subdivisions of a state and its jurisdiction is limited to such employees.

In the courts below, respondents challenged subject matter jurisdiction on the ground that Title III of the Act, its trusteeship provisions, apply only to trusteeships over subordinate labor organizations. The district court rejected respondents' contention, both initially on motion and in its final opinion and judgment. The court of appeals, however, agreeing with the respondents' position, concluded that Title III, like the rest of the Act, was intended to apply only to labor organizations, and therefore did not confer jurisdiction to entertain the case. Accordingly, the court of appeals entered judgment reversing the district court and directing dismissal of the complaint.

ARGUMENT

The decision of the court of appeals is clearly correct and there is no conflict of decisions. Review by this Court is thus not warranted.

1. After analyzing the entire Act, the court of appeals concluded that the phrases "labor organization," "sub-

ordinate labor organization," and "subordinate body" had been used interchangeably in Title III, and that the Act could be properly interpreted only if all were read to mean "subordinate labor organization." A trusteeship over a local union which represents only public employees and is, therefore, not a labor organization within the meaning of the Act, is thus not regulated by Title III. The court derived its conclusion from the statutory scheme, wherein all titles other than this one expressly have no application to such public employee unions, as well as from the precise manner in which the alternative phrases are used in the four operative sections of Title III. Its conclusion is also consonant with the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. § 151 *et seq.*), which establishes collective bargaining rights for most labor unions, but excludes public employee unions from its coverage. Thus, the court below has followed this Court's teaching that the Act's "proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve." *Wirtz* v. *Bottle Blowers Assn.*, 389 U.S. 463, 468. Its reading of the sections here involved is proper, and petitioners offer no real argument to the contrary.

2. The few decisions squarely deciding this issue are consistent with that of the Third Circuit below. There is but one other appellate decision on the issue, that of the U.S. Court of Appeals for the Tenth Circuit in *Colorado Labor Council AFL-CIO,* v. *AFL-CIO,* Case No. 72-1701 (C.A. 10, decided June 20, 1973, reh. den. Aug. 6, 1973) (the opinion, which is not yet reported, is set forth in Appendix B hereto). That case involved

a trusteeship imposed by the AFL-CIO over the Colorado Labor Council, an association of labor unions in Colorado that is affiliated with and chartered by the AFL-CIO. Under Section 2(i) of the Act, 29 U.S.C. 402(i), the Colorado Labor Council, as a state central body, does not come within the Act's definition of labor organization.[1] Thus the case involved the precise question here at issue: whether a trusteeship established over a subordinate body which is not a labor organization as defined by the Act is nevertheless governed by the Act.

The Tenth Circuit went through essentially the same analysis as did the court below and concluded:

> [W]e are of the firm view that Sections 302 and 304 of Title III should not be read literally and that, when read in context, the phrase "subordinate body" as used in these two sections means, and is limited to, "subordinate labor organizations". (Appendix B, *infra*, p. 14a)

Apparently in an attempt to create the appearance of a conflict, petitioners note (Pet., p. 5) that "[t]his issue is also now pending rehearing on appeal in the Tenth Circuit in the matter of *Colorado Labor Council v. American Federation of Labor and Congress of Industrial Organizations,* (D. Col. 1972)." Whether it ever may be argued that a conflict in decision exists because a petition for rehearing has been filed in one of two cases that have reached the same result, it is

---

[1] As in the case of AFSCME International, the AFL-CIO has chartered local unions which represent or seek to represent employees of employers engaged in an industry affecting commerce. Therefore, the AFL-CIO is a labor organization within the meaning of the Act.

impossible to do so where the petition for rehearing explicitly eschews the issue in question. Yet, the first paragraph of the petition for rehearing filed by the Colorado Labor Council states:

> In this petition for rehearing, plaintiffs-appellees do not ask this Court to reconsider its decision that sec. 302, LMRDA [29 U.S.C. § 462], is applicable only to subordinate labor organizations and that the Colorado Labor Council therefore is not entitled to the benefit of its provisions. We request only that. . . . (See Appendix C, *infra,* p. 16a.)

As noted above, the petition for rehearing has been denied.

The only other case deciding this issue is *Cobb* v. *American Federation of State, County and Municipal Employees, AFL-CIO,* Civil Action No. 31282, (E.D. Mich., decided Aug. 30, 1968) in which the court dismissed a complaint challenging a trusteeship imposed over a subordinate body consisting solely of public employees, on the ground that the provisions of Title III apply only to trusteeships over subordinate labor organizations. (This unreported decision is set forth in Appendix D hereto.) Thus, all three cases deciding this issue are in accord in upholding respondents' position.

In a number of other cases, all involving the United Mine Workers, the parent union argued that its trusteed districts were not "labor organizations" and that therefore the Act was inapplicable. Finding, in each case, that the subordinate body was a labor organization, the courts did not reach the issue with which we are concerned. See *Brennan* v. *UMW,* 475 F.2d 1293, 1296 (C.A.D.C.); *Monborne* v. *UMW,* 342 F. Supp.

718, 722 (W.D. Pa.); *Cross* v. *UMW*, 353 F. Supp. 504, 507 (S.D. Ill.).

The decisions of the Third and Tenth Circuit Courts of Appeals are in harmony also with the interpretation of Title III by the Secretary of Labor. The Secretary, who is responsible for administering most of the Act, participated as amicus curiae in the *Colorado Labor Council* case in the Tenth Circuit. His position there was, in brief, that a trusteeship within the reach of the Act can only be one in which both the parent and the subordinate body are labor organizations as that term is defined in the Act, so that the Colorado District Court lacked jurisdiction over the action. In the case at bar, the position of the Department of Labor was presented to the court below through a letter, filed in a supplemental appendix, from the Director of the Office of Labor-Management and Welfare Pension Reports, U.S. Department of Labor, to counsel for the respondents. (For the convenience of the Court, the letter is reproduced in Appendix E.) The Director is the official charged with the responsibility to investigate complaints under Section 304(a) of the Act, alleging violations of its trusteeship provisions. His letter concludes:

> [T]he Department of Labor has consistently taken the position, that an all government employee local is not a labor organization within the meaning of the Act, and therefore, *none of the provisions of Title III of the Act apply to the relationship between a parent labor organization and a local which is not a labor organization.* (Appendix E, *infra,* at p. 20a, emphasis added.)

It is well settled that the interpretation of a statute by the official principally charged with its adminis-

tration is entitled to great weight. *Udall* v. *Tallman,* 380 U.S. 1, 16; *Norwegian Nitrogen Products Company* v. *United States,* 288 U.S. 294, 315; *Brewster* v. *Gage,* 280 U.S. 327, 336; 1 Davis, *Administrative Law,* Section 5.01 at 289, 290 (1958).

3. The outcome of this case is of little importance to others than the Respondent AFSCME and those of its subordinate bodies that consist solely of public employees. There are few other national or international unions having subordinate bodies that are not labor organizations within the meaning of the Act. The paucity of decisions dealing with the issue herein during the fourteen years since passage of the Act indicates the minor impact of any decison on this issue.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX A

Statutory Provisions Involved

The Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, 73 Stat. 519 *et seq.* as amended, 29 U.S.C. §§ 401 *et seq.*, provides in pertinent part:

DEFINITIONS

SEC. 3. For the purposes of titles I, II, III, IV, V (except section 505) and VI of this Act—

* * * *

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

* * * *

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(1) is the certified representative of employees under the provision of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

* * * *

TITLE III—TRUSTEESHIPS

REPORTS

SEC. 301. (a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after the date of the enactment of this Act or the imposition of

any such trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the subordinate organization in the selection of delegates to represent such organization in regular or special conventions or other policy determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

(b) The provisions of section 201(c), 205, 206, 208, and 210 shall be applicable to reports filed under this title.

(c) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals, or destroys any documents, books, records, reports, or

statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

PURPOSES FOR WHICH A TRUSTEESHIP MAY BE ESTABLISHED

SEC. 302. Trusteeships shall be established and administered by a labor organization over a subordinate body only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization.

UNLAWFUL ACTS RELATING TO LABOR ORGANIZATION UNDER TRUSTEESHIP

SEC. 303. (a) During any period when a subordinate body of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such subordinate body were eligible to participate or (2) to transfer to such organization any current receipts or other funds of the subordinate body except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided*, That nothing herein contained shall prevent the distribution of the assets of a labor organization in accordance with its constitution and bylaws upon the bona fide dissolution therof.

(b) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

ENFORCEMENT

SEC. 304. (a) Upon the written complaint of any member or subordinate body of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or subordinate body of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate.

(b) For the purpose of actions under this section, district courts of the United States shall be deemed to have jurisdiction of a labor organization (1) in the district in which the principal office of such labor organization is located, or (2) in any district in which its duly authorized officers or agents are engaged in conducting the affairs of the trusteeship.

(c) In any proceeding pursuant to this section a trusteeship established by a labor organization in conformity with the procedural requirements of its constitution and bylaws and authorized or ratified after a fair hearing either before the executive board or before such other body as may be provided in accordance with its constitution or bylaws shall be presumed valid for a period of eighteen months from the date of its establishment and shall not be subject to attack during such period except upon clear and convincing

proof that the trusteeship was not established or maintained in good faith for a purpose allowable under section 302. After the expiration of eighteen months the trusteeship shall be presumed invalid in any such proceeding and its discontinuance shall be decreed unless the labor organization shall show by clear and convincing proof that the continuation of the trusteeship is necessary for a purpose allowable under section 302. In the latter event the court may dismiss the complaint or retain jurisdiction of the cause on such conditions and for such period as it deems appropriate.

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APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAY TERM—1973

No. 72-1701

Filed
JUN 20 1973

COLORADO LABOR COUNCIL, AFL-CIO,
an unincorporated association,
HERRICK ROTH AND A. TOFFOLI,
Plaintiffs-Appellees,

v.

AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
an unincorporated association,
GEORGE MEANY AND DANIEL J. HEALY,
Defendants-Appellants.

Appeal from the United States District Court
For the District of Colorado
(D.C. No. C-4342)

Philip Hornbein, Jr. (Roy O. Goldin with him on the brief), for Plaintiffs-Appellees.

Thomas E. Harris, Associate General Counsel, AFL-CIO (J. Albert Woll, General Counsel, AFL-CIO, Robert C. Mayer, Laurence Gold, Donald P. MacDonald and James C. Fattor, with him on the brief), for Defendants-Appellants. Harlington Wood, Jr., Assistant Attorney General, James L. Treece, United States Attorney, Morton Hollander and William Kanter, Attorneys, Department of Justice; and Richard F. Schubert, Solicitor of Labor, Beate Block, Associate Solicitor, Harper Barnes, Regional Solicitor, and Cornelius S. Donoghue, Jr., Attorney, Department of Labor, of Counsel, on the brief, on behalf of the Secretary of Labor, as Amicus Curiae.

Before LEWIS, Chief Judge, and BREITENSTEIN and McWILLIAMS, Circuit Judges.

PER CURIAM.

This is an appeal from a preliminary injunction issued by the United States District Court for the District of Colorado prohibiting the effectuation of a trusteeship sought to be imposed by the AFL-CIO over the Colorado Labor Council. In our view, the trial court had no jurisdiction over the subject matter sought to be litigated and accordingly lacked jurisdiction to enter the injunctive order here complained of. Resolution of the controversy involves a consideration of the Labor-Management Reporting and Disclosure Act of 1959, hereinafter referred to as the Act. Some background information is needed if the narrow issue here to be decided is to be placed in focus.

The AFL-CIO is an unincorporated association, headquartered in Washington, D. C., whose membership is composed of affiliated national and international unions, local unions, State and local central bodies, and trade and industrial departments. As concerns state and local central bodies, the rules of the AFL-CIO provide that state and local central bodies which are granted charters by the AFL-CIO shall conform their activities on national affairs to the policies of the AFL-CIO.

The Colorado Labor Council, hereinafter referred to as the Council, is an unincorporated association chartered by the AFL-CIO in 1956 and headquartered in Denver, Colorado, with its membership being composed of national and international unions affiliated with the AFL-CIO and operating in Colorado, and as such the Council is a state central body.

Without going into great detail, sometime in July 1972, a controversy arose between the AFL-CIO and the Council concerning the endorsement of a candidate for the office of President of the United States. AFL-CIO, on the one hand, determined not to endorse any candidate for the office, but

at the same time permitted "affiliates" to endorse any candidate of their choice. By subsequent statement, "affiliates" were declared by the AFL-CIO to be only national and international unions, and not state and local central bodies, such as the Council. The Council, however, interpreted the foregoing pronouncements from its parent body to mean that it was free to endorse a candidate of its choice, notwithstanding the clarification pronouncement that it was not considered to be an affiliate. Accordingly, the Council on August 7, 1972, adopted a resolution endorsing the candidacy of Senator George McGovern for President.

Based on the foregoing events, AFL-CIO instituted internal disciplinary proceedings against the Council, which culminated in a suspension of the Council's charter and the appointment of a trustee to take charge of and conduct the business of the Council in place of its duly elected officials, the latter being suspended from office. When the trustee arrived in Denver, Colorado, prepared to assume control of the Council as trustee, the Council rejected the trusteeship and brought suit in the United States District Court for the State of Colorado seeking to enjoin the imposition of the trusteeship.

Council's complaint was based upon Sections 302 and 304 of the Act, and it was alleged that the proposed imposition of a trusteeship over the Council by the AFL-CIO was in contravention of the provisions of the aforesaid Sections 302 and 304 of the Act. Jurisdiction was based upon those sections of the Act and also upon 28 U.S.C. § 1337. After an evidentiary hearing, the trial court determined that it had jurisdiction and entered a preliminary injunction enjoining the AFL-CIO from imposing a trusteeship on the Council. Pursuant to the provisions of 28 U.S.C. § 1292(a), AFL-CIO now seeks review of that injunctive order. As indicated, we are of the view that the trial court lacked jurisdiction over the subject matter of the controversy and accordingly was without jurisdiction to enter the preliminary injunction here complained of.

In arguing that the trial court had jurisdiction over the subject matter of the controversy between the parties to the end that the trial court had the requisite jurisdiction to enter the injunctive relief prayed for, the Council, as indicated, relies primarily on Sections 302[3] and 304[4] of Title III of the Act as conferring such jurisdiction.

Before considering the several sections of Title III, it would be well to bear in mind one of the several definitions appearing in the preamble to the Act itself. The phrase "labor organization" is first carefully defined in considerable detail in affirmative language, and then the definition concludes with the negative language that a "labor organization" is something "other than a state or local central body." In this regard, counsel are in apparent agreement that the Council is a state central body and not a "labor organization," as the latter is defined in the Act.

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[3] "Sec. 302. Trusteeships shall be established and administered by a labor organization over a *subordinate body* only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the *subordinate* body and for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of such labor organization." (Emphasis added.)

[4] "Sec. 304. (a) Upon the written complaint of any member or *subordinate body* of a labor organization alleging that such organization has violated the provisions of this title (except section 301) the Secretary shall investigate the complaint and if the Secretary finds probable cause to believe that such violation has occurred and has not been remedied he shall, without disclosing the identity of the complainant, bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate. Any member or *subordinate body* of a labor organization affected by any violation of this title (except section 301) may bring a civil action in any district court of the United States having jurisdiction of the labor organization for such relief (including injunctions) as may be appropriate." (Emphasis added.)

The fact that the Council is not a "labor organization" as defined in the Act goes to the heart of the controversy. In this regard, AFL-CIO and the Secretary of Labor, as amicus curiae, contend that the provisions of Title III relating to the imposition of a trusteeship by a labor organization contemplate only the imposition of a trusteeship by a parent labor organization over a subordinate labor organization and have no application to the situation where, as here, a labor organization attempts to impose a trusteeship over a state central body, since the latter is not a labor organization.

The Council argues that on the contrary, Sections 302 and 304 refer to the imposition of a trusteeship by a labor organization over a "subordinate body" and that the Council, being a "subordinate body" to the AFL-CIO, is entitled to avail itself of the limitations placed on the imposition of a trusteeship by Section 302 and of the provisions of Section 304 permitting a subordinate body to seek injunctive relief in the federal district court. In rejoinder to this particular argument, the AFL-CIO counters that if the phrase "subordinate body," as used in Sections 302 and 304 of the Act, be read in context, then the phrase "subordinate body" means "subordinate labor organization." We agree with this latter interpretation.

Counsel for both sides rely to some extent on the legislative history of the Act as supporting their particular interpretation of Title III. We regard the legislative history to be inconclusive, and prefer to resolve the matter on the basis of the Act itself. In reaching the conclusion that Title III is concerned only with the imposition of a trusteeship by a labor organization over a subordinate labor organization, and does not concern itself with the imposition of a trusteeship over a subordinate body such as a state central body, we are influenced by the following factors:

1. As indicated, in the definition section of the Act, the phrase "labor organization" is defined, inter alia, as being

something "other than a state or local central body." The Act consists of six titles, and it is undisputed that Titles I, II, IV, V and VI have no application to state central bodies. In such circumstance we are disinclined to hold that out of the entire Act, Title III alone, and only two sections at that, has application to state central bodies, in the absence of a clear and unmistakable legislative intent that such was in fact intended. We find no such clear and unmistakable legislative intendment.

2. Section 301 [3] of Title III by its express terms clearly applies only in the case of a trusteeship imposed on a subordinate labor organization, with that particular section requiring periodic accounting by the parent body when it imposes a trusteeship on a subordinate labor organization.

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[3] "Sec. 301. (a) Every labor organization which has or assumes trusteeship over any *subordinate labor organization* shall file with the Secretary within thirty days after the date of any such trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the *subordinate organization;* (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent of participation by the membership of the *subordinate organization* in the selection of delegates to represent such organization in regular or special conventions or other policydetermining bodies and in the election of officers of the labor organization which has assumed trusteeship over such *subordinate organization.* The initial report shall also include a full and complete account of the financial condition of such *subordinate organization* as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a *subordinate labor organization* shall file on behalf of the subordinate labor organuization the annual financial report required by section 201(b) signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization." (Emphasis added.)

Such being the case, it is difficult for us to understand why Congress would not similarly provide that when a labor organization imposes a trusteeship over a "subordinate body," such as a state central body, it must also make a periodic accounting of its trusteeship. Yet such is clearly not the case. So, assuming for the moment that Sections 302 and 304 of Title III be held to encompass state central bodies, as well as subordinate labor organizations, then in the case of a trusteeship over a subordinate labor organization the parent body must make a periodic accounting, but when it imposes a trusteeship over a subordinate body, such as a state central body, it need not make any periodic accounting. We do not believe that Congress intended any such different handling, all of which leads us to conclude that it was not the intent of Congress to include state central bodies under the coverage of any section of Title III.

3. Section 303 [4] of Title III uses the phrase "labor organization under trusteeship" in its heading. Hence, we assume, and with justification we believe, that the body of Section 303 is concerned with, and limited to, "labor organizations under trusteeship." Nevertheless, the phrase "subordinate body" is used in the body of that section four times and

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[4] "Unlawful Acts Relating to *Labor Organizations Under Trusteeship.*

"Sec. 303. (a) During any period when a *subordinate body* of a labor organization is in trusteeship, it shall be unlawful (1) to count the vote of delegates from such body in any convention or election of officers of the labor organization unless the delegates have been chosen by secret ballot in an election in which all the members in good standing of such *subordinate* body were eligible to participate or (2) to transfer to such organization any current receipts or other funds of the *subordinate body* except the normal per capita tax and assessments payable by subordinate bodies not in trusteeship: *Provided,* That nothing herein contained shall prevent the distribution of the assets of a *labor organization* in accordance with its constitution and bylaws upon the bona fide dissolution thereof." (Emphasis added.)

then a switch is made and the phrase "labor organization" is next and last used in the proviso clause. Thus the two phrases "labor organization under trusteeship" and "subordinate body" are used, in a very real sense we submit, interchangeably in Section 303. Such suggests to us quite strongly that Congress contemplated that the "subordinate body" under trusteeship would be a "subordinate labor organization."

We conclude that the Council in a literal sense is a "subordinate body" of the AFL-CIO. However, the Supreme Court has cautioned against a literal reading of labor legislation in general, and the Act in particular. Wirtz v. Bottle Blowers Association, 389 U.S. 463 (1968). And for the reasons above stated we are of the firm view that Sections 302 and 304 of Title III should not be read literally, and that, when read in context, the phrase "subordinate body" as used in those two sections means, and is limited to, "subordinate labor organizations."

The Council also contends that regardless of the construction given Sections 302 and 304 of the Act, the trial court nonetheless had subject matter jurisdication by virtue of the provisions of 23 U.S.C. § 1337.[5] In this regard, it has been held that although § 1337 confers jurisdiction, it does not in and of itself create a cause of action. *See,* for example, B. F. Goodrich Company v. Northwest Industries, Inc., 424 F.2d 1349 (3d Cir. 1970). Assuming that the requirements of § 1337 were otherwise met, it is clear to us that the action which the Council seeks to maintain in nowise arises under the Act. For the reasons set forth above, we have held to the contrary. Accordingly, § 1337 does not in and of itself confer jurisdiction upon the trial court to enter the preliminary injunction here complained of.

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[5] "The district courts shall have jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

The Third Circuit, in a factual situation akin to that of the instant one, has quite recently reached the same result as have we and on similar reasoning. New Jersey County and Municipal Council No. 61 v. American Federation of State, County and Municipal Employees, F.2d , their case No. 72-1645, decided May 4, 1973. There, as here, the trial court enjoined the affectuation of a trusteeship by a parent labor organization over a subordinate body which, under the Act, was not a labor organization. There, the subordinate body over which the trusteeship was sought to be imposed was not a state central body, but a local union which limited its membership to *public* employees and accordingly under the terms of the Act was not a labor organization. In such setting, the Third Circuit stated that the "only conclusion which we can reasonably reach is that public employee unions are not covered by the phrase 'subordinate body' in §§ 302 and 304." Accordingly, the Third Circuit reversed the trial court on the ground that under the circumstances it had "no subject matter jurisdiction."

The preliminary injunction heretofore entered by the trial court is accordingly vacated and the cause is now remanded to the trial court with directions to dismiss the action.

APPENDIX C

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 72-1701

COLORADO LABOR COUNCIL, AFL-CIO,
an unincorporated association,
HERRICK ROTH and A. TOFFOLI,
Plaintiffs-Appellees,

v.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
an unincorporated association,
GEORGE MEANY and DANIEL J. HEALY,
Defendants-Appellants.

ON APPEAL FROM THE UNITED DISTRICT COURT
FOR THE DISTRICT OF COLORADO
(D.C. No. C-4342)

Petition for Rehearing

In this petition for rehearing, plaintiffs-appellees do not ask this Court to reconsider its decision that sec. 302, LMRDA [29 USC § 462], is applicable only to subordinate labor organizations and that the Colorado Labor Council therefore is not entitled to the benefit of its provisions. We request only that . . . .

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION
No. 31282

ALTON COBB,

Plaintiff

vs.

INTERNATIONAL UNION, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO,

Defendant

Memorandum Opinion and Order Granting Defendant's Motion to Dismiss

On June 19, 1968, the defendant, International Union, American Federation of State, County and Municipal Employees, AFL-CIO, moved this Court on a number of grounds to dismiss the above captioned case. In view of the fact that the Court finds that the first allegation, namely that the complaint on its face alleges matters which require the Court to apply the provisions of the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act), 29 USC Sec. 401 et seq, to an organization which is not subject to the provisions of that Act, requires it to dismiss this cause, it is not necessary for it to consider the other grounds for dismissal set forth in defendant's motion. Plaintiff, Alton Cobb, by his attorney, Arthur Greenstone, states in his complaint that this action arises under the Act of 1959, 73 Sta. 519 et seq, 29 USC, Sec. 401 et seq.

Defendant's Motion to Dismiss was supported by a brief, and in response thereto, the plaintiff filed a brief and, also, the defendant filed a reply brief. The Court heard oral argument by counsel for the respective parties and is duly advised in the premises.

Local 26 has jurisdiction over the employees of the City of Detroit in the Department of Public Works. It appears undisputed that Local 26 of which plaintiff is a member and former president and which is a member of the defendant International is not subject to the provision of the aforesaid mentioned Act because of the composition of it's members. Notwithstanding this fact, the plaintiff asserts that the Court has jurisdiction over this cause because the defendant is a labor organization within the meaning of Section 3(i); LMRDA, 219 USC, § 402(i), i.e., (some of its member locals are not comprised of governmental employees). There is no question that the International Union is the defendant and not Local 26, but the fact remains that the substantive matters and relief requested in the complaint deal with the interworkings of Local 26, and its' relationship with the International. The Court finds that to take jurisdiction over this cause would have the effect of applying the aforementioned Act to Local 26 to which it is not subject. It must be pointed out that in the plaintiff's brief in response to defendant's motion at Page 2, it is stated that "[P]laintiff invokes jurisdiction of this Honorable Court under the Labor-Management Reporting and Disclosures Act (hereafter LMRDA) Title I, Section 101 (a)2 and Title 3, Section 302 and 304 of the same Act." Neither the complaint nor the amended complaint allege this, and the Court does not find anything on the face of those sections which grants it jurisdiction over trusteeships such as involved in the instant case. In any event, it was the Court's understanding that the question of the validity of the trusteeship was not at issue in connection with the defendant's Motion to Dismiss.

ACCORDINGLY, IT IS ORDERED that the defendant's motion be and it is hereby granted and that the above captioned case be dismissed.

/s/
DAMON J. KEITH
U.S. District Judge

DATED: August 30, 1968

APPENDIX E

October 5, 1972

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Office of Labor-Management and Welfare Pension Reports
WASHINGTON, D.C. 20210

MR. A. L. ZWERDLING
General Counsel
American Federation of State, County
and Municipal Employees, AFL-CIO
1140 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Zwerdling:

This is in response to your October 5, 1972 letter in which you request the position of the Department of Labor with respect to whether Sections 302-304 of the Labor-Management Reporting and Disclosure Act (LMRDA) apply to the imposition of a trusteeship by a national or international union over a local all of whose members are public employees.

In its Interpretative Manual the Office of Labor-Management and Welfare-Pension Reports has given the following interpretation with respect to the application of Section 301(a) to such a situation:

> "An International union which establishes a trusteeship over a subordinate unit comprised solely of government employees is not required to comply with the reporting requirements of section 301(a) since that section applies only to trusteeship over a subordinate 'labor organization.' An organization composed of government employees is not a 'labor organization' within the meaning of section 3(i) of the Act."

In the September 1962 Report to the Congress by the Secretary of Labor upon the operation of Title III of the

LMRDA there is a clear implication on page 32 that in order for a trusteeship to exist within the meaning of Title III, both the parent and the subordinate bodies must be labor organizations within the meaning of the Act.

Although there have been no other written interpretations issued by the Department on this question, the Department of Labor has consistently taken the position, and continues to adhere to the position, that an all government employee local is not a labor organization within the meaning of the Act and, therefore, none of the provisions of Title III of the Act apply to the relationship between a parent labor organization and a local which is not a labor organization.

I trust this information will be helpful to you.

Sincerely,

/s/ Leonard J. Lubin
Director